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IN THE CIRCUIT COURT OF THE FIRST CIRCUIT
STATE OF HAWAII

HONOLULU CIVIL BEAT INC.,

Plaintiff,

vs.

DEPARTMENT OF EDUCATION,
STATE OF HAWAII,

Defendant.

CIVIL NO. 19-1-0191-02 BIA
(Other Civil Action)

PROPOSED ORDER GRANTING
PLAINTIFF'S MOTION FOR PARTIAL
SUMMARY JUDGMENT

HEARING MOTION

JUDGE: Honorable Bert. I. Ayabe

TRIAL DATE: NONE

HEARING DATE: October 10, 2019

HEARING TIME: 9:30 a.m.

**PROPOSED ORDER GRANTING PLAINTIFF'S MOTION FOR
PARTIAL SUMMARY JUDGMENT**

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JUDGE: Honorable Bert. I. Ayabe

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**ORDER GRANTING PLAINTIFF'S MOTION FOR
PARTIAL SUMMARY JUDGMENT**

Plaintiff's Motion for Partial Summary Judgment, filed August 14, 2019, was heard on October 10, 2019, at 9:30 a.m. before the Honorable Bert I. Ayabe, Judge of the above-entitled Court, with appearances by R. Brian Black and Lisa Engebretsen, counsel for Plaintiff Honolulu Civil Beat Inc. (Civil Beat). Counsel for Defendant Department of Education, State of Hawai'i (DOE) did not make an appearance at the hearing. The Court having considered Civil Beat's motion and reply memorandum, DOE's opposition, the declarations and exhibits submitted and the authorities cited by both parties, and the pleadings and other records in this case,

IT IS ORDERED, ADJUDGED, AND DECREED that Plaintiff's Motion for Partial Summary Judgment is GRANTED.

1. The Uniform Information Practices Act (Modified), Hawai'i Revised Statutes (HRS) chapter 92F (UIPA), provides that "[a]ll government records are open to public inspection unless access is restricted or closed by law." HRS § 92F-11(a).

2. DOE "has the burden of proof to establish justification for nondisclosure." HRS § 92F-15(c).

3. It is undisputed that DOE withheld some, if not all, information concerning 34 employees investigated for alleged misconduct.

4. DOE justified the withholding by claiming it was necessary to protect the identity of investigated employees, witnesses, and students under the UIPA privacy exception, the UIPA frustration exception, and the federal Family Educational Rights and Privacy Act. HRS § 92F-13(1), (3); 20 U.S.C. § 1232g.

5. DOE's asserted justifications for nondisclosure do not support withholding all information regarding its investigations.

6. For purposes of this partial motion for summary judgment, Civil Beat requested disclosure of all responsive investigation records with the identities of investigated employees, any witnesses, and any students redacted.

7. Redacting the names, addresses, telephone numbers, dates of birth, employee identification numbers, social security numbers, and other specific personally identifying information for investigated employees, any witnesses, and any students in the records will protect the privacy and other interests asserted by DOE.

8. The UIPA requires DOE to disclose the identity of any employees suspended or terminated by DOE, thirty days after the suspension or termination is final. HRS § 92F-14(b)(4)(B).

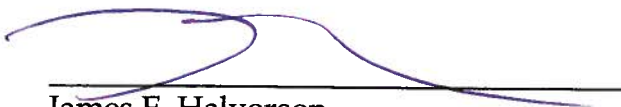
9. Therefore, on a rolling basis as available within 90 days of the filing of this Order, DOE shall disclose to Civil Beat all requested records redacting only the personally identifying information of investigated employees, any witnesses, and any students; provided that DOE will not redact the identity of investigated employees who received a final suspension or termination before the filing of this Order.

10. This Order is without prejudice to any further motion by Civil Beat after disclosure of the redacted records to seek the identity of redacted individuals.

DATED: Honolulu, Hawai'i, _____.

Judge of the Above-Entitled Court

APPROVED AS TO FORM:


for James E. Halvorson
Department of the Attorney General
Attorneys for Defendant
Department of Education, State of Hawai'i